IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11545 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJITBHAI PANCHMLAL JAIN

Versus

DISTRICT MAGISTRATE

Appearance:

MR NM KAPADIA for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1, 2 to 4

MS PJ DAVAWALA, Addl. Central Govt. Standing Counsel for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention passed

against him by the District Magistrate, Ahmedabad, on 18.7.2003 in exercise of powers under sub-Section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act) directing the detention of the petitioner and the petitioner came to be detained in pursuance of the said order on the same day.

2. The grounds served upon the petitioner and placed on record reveal that on 16.6.2003, Local Crime Branch Police intercepted three trucks, bearing No. GJ-8T-3903, GJ-13T-5990 and GJ-7T-7627. The Police found tankers and a truck loaded with solvent like liquid and, therefore, the District Supply Officer of Ahmedabad was called and informed about the material found in the truck and tankers, so the District Supply Officer of Ahmedabad took over the investigation. During the investigation, it was revealed before the District Supply Officer through the statements of the Drivers that near Sanand there is a Dev Industry, dealing and manufacturing insolvent. One of the driver alleged to have loaded the truck of said Dev Industry from Sanand, and according to him, the goods alleged to have been solvent was to be unloaded at Ahmedabad near Ellisbridge to the petitioner. It was also from the statement and inquiry revealed that the land on which the Dev Industry is situated, which was originally known as Rishi Petrochem Pvt.Limited, belonged to one Rushabhai Gayaprasad Jain, and had leased to a person named Harshad Sodha, on monthly rent of Rs.50,000/-. The authorities found that in conspiracy with Rushabhai Gayaprasad Jain and Harshad Sodha, the present petitioner was involved in dealing with the solvent illegally in breach of the Control Orders published in Essential Commodities Act, 1955. Telephone Number of the present petitioner was also traced. On placing all the materials before the detaining authority, the detaining authority came to the conclusion that the petitioner was involved in dealing with solvent in conspiracy with Rushabhai Gayaprasad Jain and Harshad Sodha. It was also the conclusion of the authority that in breach of the Control Orders published in Essential Commodities Act, the petitioner not only was dealing with the substance like solvent, but the intention of the conspirators behind dealing with this solvent was to mix such solvent in petrol and diesel and obtain economic benefit thereby. It was the conclusion of the detaining authority that hatching conspiracy to mix the solvent in petrol and diesel, the petitioner and others, who were indulging in the activity of black marketing, and those activities were required to be prevented by detention.

According to the detaining authority, there was no other alternative except to detain the petitioner under the PBM Act to prevent the illegal activities of the petitioner and hence the order impugned came to be passed.

3. Learned Advocate Mr. N.M.Kapadia for the petitioner, learned AGP Ms.Mita Panchal, for the respondents No.1, 2 and 4 and learned Additional Central Government Standing Counsel Ms. Davawala for respondent No.3 were heard at length. The affiavit-in-reply filed by the detaining authority as well as the Under Secretary, Department of Consumer Affairs, Food and Public Distribution, New Delhi, as placed on record, are also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the learned counsel for the respondents, it appears that the matter can be disposed of on the ground that whether the detaining authority took into consideration the vital aspect of the matter while passing the impugned order. On going through the grounds as placed on record, it is clear that a prosecution has been launched against the petitioner under Sections 3 and 7 of the Essential Commodities Act by the Local Crime Branch Police, Ahmedabad (Rural). According to the grounds served, the petitioner was in judicial custody when this order of detention came to be passed and served upon the petitioner. The detaining authority came to the conclusion that the petitioner was in judicial custody, he was likely to be released on bail, and on so releasing, he was likely to continue his illegal activities. Learned Advocate for the petitioner makes a statement that the petitioner has not been released on bail till today and he is under judicial custody. Therefore, it appears that the facts of this case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL AND OTHER vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, as reported in AIR 2000 SC 3675. The petitioner was in judicial custody when order came to be passed, there was no cogent material before the detaining authority to come to the conclusion that the petitioner was likely to continue the illegal activities. The detaining authority did not take into consideration this vital aspect of the matter. Therefore, the order impugned in this petition is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed. The order impugned in this Special Civil Application passed on 18.7.2003 by the District

Magistrate, Ahmedabad, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

6. The learned Advocate for the petitioner Mr. N.M. Kapadia states that now the petitioner - detenu has been trasferred from Bhuj Jail to Junagadh District Jail, the writ be sent to Junagadh District Jail also. Office is directed to send writ of this order to Junagadh District Jail forthwith. D.S. permitted.

(J.R. Vora, J.)

p.n.nair